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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

Eriksen Raul Leiva,

Petitioner

v.

Brian Williams, et al.,

Respondents

Case No. 2:15-cv-01265-JAD-PAL

**Order Denying Application to Proceed *in*  
*Forma Pauperis* and Motion to Appoint  
Counsel and Directing Clerk of Court to Serve  
Petition on Respondents**

[ECF 1, 2,]

Nevada state prisoner Eriksen Raul Leiva has submitted a petition for a writ of habeas corpus and requests court-appointed counsel.<sup>1</sup> Having reviewed Leiva's petition under the applicable standards, I instruct the Clerk of Court to serve Leiva's petition on respondents, and I give respondents 90 to file a response.

As to Leiva's request for counsel, there is no constitutional right to court-appointed counsel in federal habeas proceedings.<sup>2</sup> The decision to appoint counsel is generally discretionary,<sup>3</sup> and the court must appoint counsel only if the case is so complex that the denial of counsel would amount to a denial of due process or the petitioner's education is so limited that he is incapable of fairly presenting his claims.<sup>4</sup> Leiva's petition shows that he is capable of fairly presenting his claims, and he does not raise complex legal issues. I therefore deny Leiva's request for court-appointed counsel.

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<sup>1</sup> Leiva also filed an application to proceed *in forma pauperis*, ECF 1, but has since paid the filing fee, mooted his petition. See ECF 3.

<sup>2</sup> *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *Bonin v. Vasquez*, 999 F.2d 425, 428 (9th Cir. 1993).

<sup>3</sup> *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir. 1986), cert. denied, 481 U.S. 1023 (1987); *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th Cir. 1984), cert. denied, 469 U.S. 838 (1984).

<sup>4</sup> See *Chaney*, 801 F.2d at 1196; see also *Hawkins v. Bennett*, 423 F.2d 948 (8th Cir. 1970).

1 Accordingly, IT IS HEREBY ORDERED that petitioner's motion for appointment of  
2 counsel [ECF 2] is **DENIED**; petitioner's application to proceed *in forma pauperis* [ECF 1] is  
3 **DENIED** as moot; and:

4 1. **The Clerk of Court is instructed to electronically serve the petition [ECF 3] on the**  
5 respondents.

6 2. **Respondents have 90 days from the date of service of the petition to file a response.**  
7 Respondents are cautioned that any response must comply with the instructions below, which are  
8 issued in accordance with Habeas Rule 5.

9 3. Respondents must raise any procedural defenses together in a single, consolidated  
10 motion to dismiss. No procedural defenses should be included with the merits in an answer.  
11 Procedural defenses not included in a motion to dismiss may be deemed waived.

12 4. Respondents are instructed that, in any answer filed on the merits, they must cite to and  
13 address the applicable state-court record, if any, that pertains to that claim. All state-court records  
14 should be filed as exhibits with a separate index that identifies each by number.

15 5. **Petitioner will then have 45 days from the date of service of the answer, motion to**  
16 **dismiss, or other response, to file a reply.**

17 6. The parties must **send courtesy copies of all exhibits to the Reno Division of this**  
18 **court:** Clerk of Court Attn: Staff Attorney, 400 S. Virginia St., Reno, NV, 89501. Courtesy copies  
19 may be submitted in paper form or as PDF documents saved to a CD, as long as each PDF is clearly  
20 identified by exhibit number.

21 Dated this 10th day of February, 2016.

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24 Jennifer A. Dorsey  
25 United States District Judge  
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